NPT/CONF.2020/PC.II/WP.8

Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

9 March 2018

Original: English

Second session
Geneva, 23 April–4 May 2018

Framework for peaceful nuclear cooperation

Working paper submitted by France

1. The development of peaceful uses of nuclear energy is central to the implementation of the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons, along with nuclear disarmament and non-proliferation. All States parties to the Treaty should be able to benefit from the civil applications of nuclear energy, provided that they respect their international obligations and pursue nuclear activities exclusively for peaceful purposes.

2. The development of nuclear energy can provide a competitive, predictable and sustainable way to meet growing energy needs while helping States to meet their goals of reducing greenhouse gas emissions and guaranteeing the security of the energy supply, at affordable costs.

3. To ensure international support for the responsible and sustainable development of nuclear energy, as well as of other peaceful nuclear applications, international cooperation in this field should be pursued in a manner consistent with international obligations, in accordance with the highest international standards of nuclear safety, security, non-proliferation and environmental protection. International cooperation should also be based on the specific objectives, needs and assets of each partner country.

4. As the strategic decision to launch a civil nuclear power programme on a State's territory, or to supply a facility or nuclear material (outside a State's territory) requires the involvement of governmental authorities, the conclusion of an intergovernmental agreement is often a prerequisite and an appropriate tool for industrial, institutional, scientific or technical partnerships in the field of nuclear cooperation. The preparation of such an intergovernmental agreement and its negotiation usually involve a wide range of national actors.

5. Alongside the States that have already developed a civil nuclear industry, some 30 additional States are, at various stages of progress, currently considering the use of nuclear energy in their energy mix. In this context, many of them have entered into intergovernmental agreements with nuclear-mature States in order to support civil nuclear cooperation.

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6. Although there is no single model or framework for civil nuclear cooperation, such umbrella intergovernmental agreements, which can be supplemented with project-specific agreements, may usefully include provisions regarding:[1]

- Areas of cooperation
- Definitions
- Protection of information
- Nuclear safety
- Peaceful, non-explosive use assurances
- International Atomic Energy Agency safeguards, including fallback safeguards
- Nuclear security, including physical protection
- Transfers and retransfers of nuclear materials, specific equipment and technologies
- Intellectual property
- Nuclear third-party liability
- Monitoring of the cooperation
- Settlement of disputes
- Entry into force and duration

7. The conclusion of an intergovernmental agreement establishes a clear framework for active cooperation, with a clear identification of partner countries' objectives and relevant stakeholders on both sides. It presents the advantage of providing legal certainty and stability and helps to streamline the export control process. Moreover, it clearly establishes the reciprocal obligations that both parties must undertake.

8. As we work towards the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, France would like to share its experience in this field and consider how to best promote the responsible and sustainable development of civil nuclear energy programmes through enhanced cooperation, based on intergovernmental agreements.

9. For this purpose, France has developed examples of what could constitute a non-exclusive reference on good practices and elements to be included with regard to intergovernmental agreements in the field of civil nuclear cooperation. The examples could be discussed in general and in relation to other national practices during the meetings of the 2018 Preparatory Committee, serving as a contribution to the work of the Preparatory Committee under the third pillar of the Treaty.

Examples of good practices and elements of an intergovernmental agreement for the development of civil nuclear cooperation

Areas of cooperation

10. A description of possible areas of cooperation, for example: exchange of information on energy policy, legislation and regulation in the nuclear field, fundamental and applied research and development, uses of nuclear energy, such as

[1] This is an illustrative list of possible elements to be included in an intergovernmental agreement. Each State has the right, pursuant to domestic policy requirements, to adopt conditions of supply that may be more comprehensive or that may not have been included in the present working paper.

for the generation of electricity and other applications, spent nuclear fuel and radioactive waste management, nuclear safety, radiation protection and radiological environmental protection, nuclear security, human resources development, and so on.

Definitions

11. Definitions of key terms referenced in the agreement, including nuclear material, material equipment and technology.

Protection of information

12. An agreement to protect information exchanged that is marked as such, if need be, through a dedicated security agreement on the exchange of confidential and sensitive information.

Nuclear safety

13. A reference to the objective of achieving and maintaining the highest levels of nuclear safety and/or explicitly to relevant instruments.

Peaceful, non-explosive uses

14. A commitment that the transfers under the cooperation agreement, including of knowledge and technology, as well as of their results and by-products, will be used exclusively for peaceful purposes.

International Atomic Energy Agency safeguards, including fallback safeguards

15. A commitment that the transfers of nuclear material under the cooperation agreement and their successive generations will be subject to International Atomic Energy Agency (IAEA) safeguards under the relevant agreement supplemented by the additional protocol, if the partner country has concluded one. If the partner country has not concluded an additional protocol, reference should be made to the fact that such a conclusion will be considered and that the additional protocol will be applied, once in place.

16. In the event that IAEA safeguards are not applicable, the parties undertake to establish a mutually agreed safeguards system covering all items subject to the agreement.

Physical protection of nuclear material and nuclear facilities

17. A reference to the objective of achieving and maintaining effective physical protection of nuclear material and nuclear facilities, pursuant to international standards, and adhering to relevant conventions.

Transfers and retransfers

18. An agreement that retransfers of items (nuclear materials, specific equipment and technology) transferred under the cooperation agreement and items derived therefrom can be made only after obtaining the prior written consent of the initial supplier in a manner that is consistent with its domestic non-proliferation requirements. In some instances, this could require that the retransfer is authorized only to a third party that has also concluded an intergovernmental agreement with the initial supplier States.

19. Some intergovernmental agreements can specify that transfers of items that represent the greatest proliferation risk (nuclear materials, specific equipment and technologies, as well as any items derived or produced through their use) may occur

only when the other party has agreed to make them subject to the conditions of the agreement upon transfer.

20. Some intergovernmental agreements may also include provisions that establish specific conditions for reprocessing and high enrichment, under which reprocessing and enrichment beyond 20 per cent of nuclear material subject to the agreement can take place, including the need for consultations and prior consent.

Intellectual property

21. A general clause regarding the protection of intellectual property, stating, for instance, that in the framework of the cooperation, intellectual property will be attributed on a case-by-case basis, in specific agreements or contracts.

Nuclear third-party liability

22. A reference to the principles established through the main relevant international conventions, on the basis of which the parties agree on a third-party liability regime and provide for the appropriate insurance coverage and/or adherence to the specific conventions.

23. For some States, intergovernmental agreements may not address nuclear third-party liability.

Monitoring of the cooperation

24. A reference to the setting up, for example, of a working group to monitor the cooperation.

Settlement of disputes

25. A general provision on an agreed mechanism for the settlement of disputes.

Entry into force and duration

26. General provisions for entry into force. The duration is usually from 10 to 40 years and is possibly tacitly renewable.

27. France wishes to engage in a dialogue, in the framework of the 2018 Preparatory Committee, to consider how to promote good practices in terms of intergovernmental agreements on the responsible development of civil nuclear cooperation.